

## REMARKS

### I. The Section 112 Rejection

The Examiner has objected to the disclosure under 37 C.F.R. §1.63(a), on the basis that the specification presents less than a full and complete botanical description of the plant and the characteristics which distinguish the plant from related known varieties. Claim 1 stands rejected under 35 U.S.C. § 112, first and second paragraphs, as not being supported by a clear and complete botanical description of the plant for the reasons set forth in the Examiner's objection to the disclosure.

The Examiner has also objected to the name of the instant variety 'Allegro' as identical to that of a different variety from the Netherlands already having the same name.

The specification has been amended, as suggested by the Examiner, to make a full and complete a disclosure of the plant and the characteristics that distinguish it from other related known varieties and antecedents. With reference to the red-lined version, the specification has been amended at page 5, line 17, to add the petiole diameter of the instant variety. At page 6, lines 16-21, the length, diameter, color, habit, surface and strength of the peduncle have been added. At page 6, line 22, the specification has been amended to indicate that the ray florets are oblong in shape.

The specification has been further amended to change the name of the instant variety at each instance, including the Abstract, from 'Allegro' to 'Allegro Jazz.' The new name 'Allegro Jazz' is no longer identical or confusingly similar to the unrelated variety 'Allegro.'

There are no amendments to the claim.

The above amendments to the specification and remarks have addressed the remaining Examiner's objections to the disclosure under 37 C.F.R. §1.63, first paragraph and

under 35 U.S.C. § 112, first and second paragraphs as well as the Examiner's objection to the variety name. It is respectfully submitted that those objections are now overcome. As a consequence, the basis for the Examiner's rejection under 35 U.S.C. § 112, first and second paragraphs, is no longer present and it is respectfully requested that the rejection on this basis be withdrawn.

### CONCLUSION

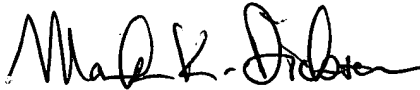
It is respectfully submitted that the Examiner's rejection under 35 U.S.C. § 112 and objection to the variety name have been overcome by the above-amendments and remarks and should be withdrawn. There are no further rejections or objections to the disclosure or the claim and the application is now believed to be in condition for allowance.

No additional fees are believed to be due, however, the U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency, or credit any overpayment, to Deposit Account No. 08-3038 referencing docket number 10451.0048.NPUS00.

The Examiner is invited to contact the undersigned attorney at (650) 463-8234 regarding any further questions, comments or suggestions relating to this patent application.

Dated: June 14, 2004

Respectfully submitted,



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In re application of: Keith G. Lintott

Appl. No.: 10/692,910

Filed: October 24, 2003

For: Chrysanthemum Plant Named 'Allegro  
Jazz'

Art Unit: 1661

PTO Confirmation No.: 9054

Examiner: Annette H. Para

Atty. Docket: 10451.0048.NPUS00

### **PETER HESSE DECLARATION**

## DECLARATION

I, Peter Hesse, hereby declare as follows:

1. I make this declaration based upon my own personal knowledge and if called as a witness I could and I would competently testify to the facts set forth below.
2. I was the Marketing Manager of Royal Van Zanten LLC (formerly known as Van Zanten North America) from July 1, 2000, until the company ceased its U.S. operations in early 2004. Royal Van Zanten, located in Nipomo, California, produced and sold Chrysanthemum cuttings for pots, cuts and gardens.
3. During the time that I was Marketing Manager, Royal Van Zanten was the exclusive U.S. distributor for Chrysanthemum varieties developed by Cleangro Ltd, located in Chichester, West Sussex, United Kingdom. The Chrysanthemum varieties distributed by Royal Van Zanten were sold in the United States directly to a limited number of customers by Royal Van Zanten and through Ball Seed Company, Chicago, Illinois, as the exclusive U.S. sales representative for Cleangro Ltd.
4. Royal Van Zanten advertised its stock of Chrysanthemum varieties by catalog, including the Royal Van Zanten Garden Mum Catalog 2002 ("the Garden Mum Catalog"). A copy of the Garden Mum Catalog is attached to this declaration as Exhibit A.
5. An investigation performed with my assistance has shown the following: the Garden Mum Catalog was printed for Royal Van Zanten and delivered on or about October 12, 2001. Copies of the Garden Mum Catalog were given to sales representatives of Ball Seed at a conference in Chicago on or about Wednesday, October 17, 2001. A draft mailing list for distribution of the catalog by Royal Van Zanten to potential customers was first created at Ball Seed as a spreadsheet on Friday, October 22, 2001. A letter to be inserted into the catalog for distribution was created at Ball Seed as a Microsoft WORD document on Monday, October 22, 2001. (See Exhibit B) Thus the

catalog would not have been ready for distribution to potential customers prior to at least Tuesday October 23, 2001.

6. Pricing information for the varieties listed in the Garden Mum Catalog was not included with the catalog shipped to potential customers. Pricing could be obtained and orders made by contacting Ball Seed or through its website. A select few customers could obtain pricing information and order directly from Royal Van Zanten.

7. To the best of my knowledge, the standard business practice at Royal Van Zanten for distributing catalogs such as the Garden Mum Catalog in the United States was to send the catalogs as bulk mail at the Standard Mail through the United States Post Office.

8. Information obtained from the United States Postal Service regarding Standard Mail shipping for catalogs of the size and weight of the Garden Mum Catalog shows the speed of delivery to be at least 2-9 days for locations throughout the United States. According to the United States Postal Service, this would have applied in 2001 also.

9. As far as I am aware, the Garden Mum Catalog was the first published disclosure in the United States by Royal Van Zanten or Ball Seed for at least the following Chrysanthemum varieties shown in the catalog: Allegro, Dove Bronze, Follies, Jenny Wren Crimson, Peacock VZ Royal, Rio Dark, Starlet Bronze, Starlet Pink and Starlet White.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on May 24, 2004, in Nipomo, California.

  
PETER HESSE



Ball Seed has some great news to share with their customers. We will now be able to provide our customers with new, exciting and exclusive Pot, Cut and Garden Mum varieties from Van Zanten North America.

*Van Zanten is the worldwide leader in Mum breeding, production and distribution.*

*In July 2000, Van Zanten started a new venture in Nipomo, California. Nipomo was selected because of its unique climate to provide you the best possible quality cuttings year round. In cooperation with 2 world famous breeders, CBA from the Netherlands and Cleangro from the United Kingdom, Van Zanten North America will be introducing exclusive and extensive "State of the Art" product lines in cut, pot and garden mums.*

The Garden Mum catalogue is just bursting with new introductions: these were especially created and tested for the North American market and growing conditions. The Showmakers of Van Zanten are divided into 3 groups: Grandifloras, Multifloras and the Belgian Multiminis. This will make it easy for you to chose the varieties that will suit your needs.

Share in the excitement. Ordering your Van Zanten North America Mums from Ball Seed is easy on Webtrack at [www.ballseed.com](http://www.ballseed.com). Or fax your order in to our Customer Service at 1-800-231-0370.

Call your Ball Seed salesrep for more information, and you can always reach us at 1-800-879-BALL.

Diane Surette  
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Ball Seed co.